

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KEITH ANDERSON,)	
)	
Plaintiff,)	Civil Action No. 10-937
)	Chief Judge Lancaster
v.)	Magistrate Judge Bissoon
)	
LOUIS FOLINO, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

Keith Anderson (“Plaintiff”) is a state inmate currently incarcerated at the State Correctional Institution at Rockview (“SCI-Rockview”), in Bellefonte, Pennsylvania. Plaintiff brings this suit pursuant to the Civil Rights Act of 1871, 42 U.S.C § 1983, *et seq.*, alleging that, while he was incarcerated at the State Correctional Institution at Greene (“SCI-Greene”), his rights under the Eighth Amendment to the Constitution of the United States were violated on multiple occasions by a host of Defendants. See generally Compl. (Doc. 3). Plaintiff also seeks redress under multiple provisions of the Pennsylvania Constitution, and brings various Pennsylvania tort claims as well. Plaintiff explicitly states that he is suing Defendants in their individual and official capacities. Id. at 12. This case was referred to United States Magistrate Judge Cathy Bissoon for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

On August 22, 2011, the magistrate judge issued a report and recommendation (Doc. 54), recommending that Defendant Gibbs’s motion to dismiss, (Doc. 36), be granted in part and denied in part. The magistrate judge also recommended that the partial motion to dismiss filed by Defendants Bogden, Bowman, Donna Doe, Roxanna Doe, Duke, Folino, Grimm, Kerfelt,

McAnany, Mega, Nelson, Rauenswinder, Rush, Santoya, Stump, Tanner, Walter, and Wilson (“DOC Defendants”), (Doc. 42), be granted in part and denied in part. The parties were allowed until September 6, 2011, to file objections. As of the date of this writing, no objections have been filed. After *de novo* review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 19th day of Sept, 2011,

IT IS HEREBY ORDERED that that Defendant Gibbs’s motion to dismiss (Doc. 36) is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that the DOC Defendants’ partial motion to dismiss (Doc. 42) is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that Plaintiff’s claims are disposed of in the following manner:

1. The following claims are DISMISSED with prejudice: (a) Plaintiff’s claims against Defendants in their official capacities; (b) Plaintiff’s claims against Defendant Bogden concerning alleged interference in the grievance process; (c) Plaintiff’s claims regarding denial of a period of exercise, alleged threats made by Defendants, allegedly false misconduct charges, and allegedly mishandled institutional grievances; (d) Plaintiff’s “custom and practice” claims; and (e) Plaintiff’s state tort claims against all non-medical professional Defendants.
2. The following claims are DISMISSED without prejudice to Plaintiff filing an amended complaint: (a) Plaintiff’s Eighth Amendment denial of medical care claims; (b) Plaintiff’s failure to intervene claims with respect to all Defendants except Defendant

Rauenswinder; and (c) Plaintiff's remaining conspiracy claims against all Defendants except Defendant Rauenswinder. Plaintiff shall, if appropriate, file an amended complaint with respect to these claims within 21 days of the date of this order. Failure to do so will result in the dismissal of these claims with prejudice.

3. Plaintiff's claims arising from the Pennsylvania Constitution are DISMISSED for lack of subject matter jurisdiction, without prejudice to Plaintiff re-filing in state court.
4. Defendants' motions to dismiss are DENIED with respect to: (a) Plaintiff's failure to intervene claim against Defendant Rauenswinder; (b) Plaintiff's conspiracy claim against Defendant Rauenswinder; and (c) Plaintiff's state law tort claims against Defendants Gibbs, McAnany, Wilson, Walter, Donna Doe, and Roxanna Doe.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Bissoon (Doc. 54) is adopted as the opinion of this Court with respect to the above motions.

BY THE COURT:



GARY L. LANCASTER
CHIEF UNITED STATES DISTRICT JUDGE

cc:

KEITH ANDERSON

AS-3252

SCI Rockview

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